

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/765,703	01/22/01	ANTON	W REV 96-3B

HM12/0905

EXAMINER

WANG, S

ART UNIT

PAPER NUMBER

1617

JULIE BLACKBURN, ESQ.  
REVLON CONSUMER PRODUCTS CORPORATION, LA  
625 MADISON AVENUE  
NEW YORK NY 10022

**DATE MAILED:** 09/05/01

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/765,703	ANTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Shengjun Wang	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claim's

- 4) Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 21-40 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- |  |  |
|--|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 20) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 32 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Particularly, the R1 in the polymer has already been defined in claim 21.

### ***Claims Rejections 35 U.S.C. 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 21-24, 30 and 39-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Schehlmann et al.

4. Schehlmann et al teach a lipstick comprising oil, e.g., castor oil, particulate, e.g., microcrystalline wax and polymethacrylate. See example 34 in column 11.

### ***Claim Rejections 35 U.S.C. 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1617

6. Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castrogiovanni et al. (US 5,505,937) in view of Schehmann et al. (US 6,132,705) and Kumar et al. (US 5,468,477).

7. Castrogiovanni et al. et al. teaches a lipstick comprising volatile oil, non-volatile oil, wax employed herein and particulate. See the entire document, particularly, the examples, and the claims.

8. The primary reference does not teach expressly the employment of the methacrylate polymers herein or the particular percentage of each and every ingredients herein.

9. However, Schehmann et al. teaches that a methacrylate polymer is known to be useful in cosmetic composition for its water resistance. See, column 1, lines 9-35. Schehmann et al further teaches the polymers herein known to be particular useful in cosmetic composition, including lipstick. See, particularly, column 1, line 36 bridging column 2, line 45 and examples 33 and 34 in columns 10 and 11. Schehmann et al. also suggests that the polymers herein would possess the glass transition temperature. See, column 4, lines 4-18.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to modify the lipstick composition of Castrogiovanni et al. by adding methacrylate polymers herein

A person of ordinary skill in the art would have been motivated to modify the lipstick composition of Castrogiovanni et al. by adding methacrylate polymers herein because the methacrylate polymers are known to increase the water resistance of the lipstick composition.

Claim 25 is rejected for reasons set forth above in further view of Kumar et al. Kumar et al. that isobornyl methacrylate is known to be similarly useful as methyl methacrylate as they

Art Unit: 1617

polymerize to form polymers with similar glass transition temperature. See column 15, line 10 bridging column 16, line 11, particularly, column 16, lines 9-11. the optimization of the percentage of each known ingredient in a cosmetic composition is considered within the skill of artisan, absent evidence to the contrary.

10. Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castrogiovanni et al. (US 5,505,937) in view of Tanabe et al. (JP abstract, JP 07187951) and Kumar et al. (US 5,468,477).

11. Castrogiovanni et al. et al. teaches a lipstick comprising volatile oil, non-volatile oil, wax employed herein and particulate. See the entire document, particularly, the examples, and the claims.

12. The primary reference does not teach expressly the employment of the methacrylate polymers herein or the particular percentage of each and every ingredient herein.

13. However, Tanabe teaches that poly methyl methacrylate is known to be useful in lipstick composition for its film forming properties and water and oil resistance. See the abstract.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to modify the lipstick composition of Castrogiovanni et al. by adding methyl methacrylate polymers herein

A person of ordinary skill in the art would have been motivated to modify the lipstick composition of Castrogiovanni et al. by adding methyl methacrylate polymer because methyl methacrylate polymer is known to increase the water resistance of the lipstick composition.

Claim 25 is rejected for reasons set forth above in further view of Kumar et al. Kumar et al. that isobornyl methacrylate is known to be similarly useful as methyl methacrylate as they

Art Unit: 1617

polymerize to form polymers with similar glass transition temperature. See column 15, line 10 bridging column 16, line 11, particularly, column 16, lines 9-11. the optimization of the percentage of each known ingredient in a cosmetic composition is considered within the skill of artisan, absent evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Shengjun Wang

AU 1617

September 3, 2001



RUSSELL TRAVERS  
PRIMARY EXAMINER  
GROUP 1200